

ADEPT Legal Commentaries

March 2004

Parliament activity, March 1-5, 2004

10 March 2004

During the aforesaid period MPs examined a string of draft laws. Opposition and majority faction deputies alike argued against the draft laws under consideration. Some of them shall be considered in greater detail below.

I. Law on the modification and completion of legal acts on retirement and social care

ADEPT Comment: Parliament decided on privileged terms of retirement for women who gave birth and raised until the age of eight, five or more children. Those women may retire at the age of 54. In addition, privileged terms were set for persons working under harmful or difficult conditions, retirement age for men being 54 and for women 49. The legal framework regulating retirement has been completed with a single norm providing that minimal work experience in order to qualify for age pension would be no less than 30 years.

The Law on Veterans was completed with provisions on supplements to pensions for special merits to all categories of veterans, including those who retired from military forces.

II. Draft law on offshore tax

ADEPT Comment: Under the draft a 15% offshore tax payable to the state budget shall be levied. The list of offshore zones shall be approved via a Government ruling at the recommendation of the National Bank of Moldova. Subjects to the law are residents of the Republic of Moldova, natural entities that carry entrepreneurial activity and legal entities. The following shall be subject to the tax:

- payments/ transfers of money made by residents to any non-resident of the Republic of Moldova registered in offshore, or through them to a bank account opened in an offshore zone;
- payments/ transfers of money to residents, via residents, into bank accounts opened in offshore zones;
- non-monetary obligations to non-residents registered in offshore zones;
- transferring patrimonial rights and/or liabilities, when one of the parties is resident and another is non-resident registered in offshore.

The law also provides for the transactions exempted from the tax.

Lawmakers argued that the law was necessary due to the fact that offshore zones allow for capital outflow from the country, money laundering and tax evasion. European community recommends refraining from transactions via offshore and toughening legal provisions in this respect.

Previously, under the Law no. 633-XV of November 15, 2001 on Fighting Money Laundering transactions with one of the parties being offshore resident, or transactions via offshore bank accounts were deemed suspicious.

The law garnered a rich harvest of criticism, in particular that the law would skyrocket prices on various goods (it is estimated that around 80% of the oil transactions are made via offshore). Another source of criticism was the fact that it would affect domestic entrepreneurs, as they have to work with foreign enterprises, which prefer to operate offshore and care little about Moldovan legislation. Also, offshore tax would affect financial institutions operating in Moldova, therefore entrepreneurs would have to resort to shadow schemes of doing business.

Noteworthy, several years ago the idea of establishing an offshore or free enterprise zone on the soil of the Republic of Moldova was largely debated and was viewed as a means of attracting foreign capital. However, the talks never materialised. Now we see that Government had to resort to opposite measures.

Having said that, it is worth mentioning the real causes of the amendments:

- Strong interests of economic groups close to power to limit the activity of their competitors and reorient capital flows towards banking institutions under their control - this however is a subjective version;

- Need to conform with EU recommendations requiring decisive actions to be taken in order to proceed to the negotiation of an EU - Republic of Moldova action plan.
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III. Draft law on phyto-sanitary and fertilising products

ADEPT Comment: The draft is aimed at protecting plants from various diseases in order to secure favourable conditions for sustainable development of agriculture. Due to the financial crisis the country is going through, farmers cannot purchase such products, which in turn has a negative effect on the quality and quantity of their agricultural products as well as their competitiveness on the market. The great majority of phyto-sanitary and fertilising products are imported, therefore it is important to protect the domestic market. The draft law establishes the legal framework, defines the state policy in the field, legal terms of research and experiments in the field, production, import, sale, shipment, storage and safe usage of phyto-sanitary and fertilising products.

IV. Draft law on the modification of the Law on tobacco and tobacco products

ADEPT Comment: Under the draft, tobacco and tobacco products manufactured, imported or sold by violating the law provisions shall be confiscated based on a court ruling. Afterwards they could be sold via tender on condition the tobacco meets the required standards. If the tobacco products cannot be certified and brought in accordance with the legal requirements they will be destroyed. Great many deputies objected those amendments. They argued that those amendments would boost abuses and legalization of products failing to meet the legal requirements. Another objection referred to the fact that the current system did not allow for the certification of tobacco products, which might prove to be harmful to the smokers health.

Nevertheless, the arguments brought by the Government that the draft is aimed at protecting domestic producers and securing additional revenues to the state budget prevailed over the subjective and objective criticism voiced by the deputies. Finally, the draft was approved in the first reading.

V. Draft law on the modification of the Law on taking goods in and out of the country by natural entities

ADEPT Comment: In order to liberalize exports and facilitate the entrance of citizens residing abroad into the country, Government proposed several modifications to the law that would allow:

- bringing into the country cars in use for more than 10 years: for at most 45 days, provided a money deposit is made at the customs checking point equal to twice the amount of import taxes due under the law;
- increasing the amount of goods that could be taken out by natural entities abroad from 2,000 Euro to 100,000 Euro.

The latter raised a lot of criticism. Great many deputies argued that it would encourage capital outflow from the country. Deputies considered that the arguments on the need of liberalizing exports were exaggerated (estimated at around 1.5 million Lei) and that there were very few of those in Moldova who would take out of the country this type of goods. As those arguments were quite reasonable, deputies decided to reconsider the amount and considerably drop it during the next reading of the law.

Parliament activity, March 8-19, 2004

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Parliament convened only on two sessions during the aforesaid period, thereby engaging mainly in politics rather than legislative activity. As media outlets rightly pointed out, political debates knew an apathy lately which was mainly due to the "coalition building" among centre and centre-right political parties initiated firstly by Christian Democrats and then taken over by "Moldova Noastra" Alliance. It's hard to predict the outcomes of the negotiations especially since certain discord has already occurred among the participants to the negotiation table and even some of its long-term supporters left (see in this respect the declarations of the Centrist Union of Moldova and recent statements by Victor Selin - one of the sponsors of the Moldova Noastra Alliance). To conclude, legislature did more of a technical work during the aforesaid period and examined less important legal acts.

I. Law on Investments in Entrepreneurship

ADEPT Comment: Currently investments are regulated by the Law on Foreign Investment passed back in 1992. The law protected and fostered only foreign investments and therefore was severely criticised by domestic businesses. They argued that they should enjoy a preferential treatment when investing at home and should not be forced to register joint ventures as to run businesses in the country.

The law passed by the Parliament provides legal, social, and economic principles of investment activity, investor's rights and responsibilities, mandate of public authorities in the field, guarantees provided by the state to domestic and foreign investors, and procedures for joint ventures operation.

The law defines a number of terms and types thereof. Investments could have various forms:

- right on property over movable and real estate;
- rights on stocks, on registered capital in a commercial partnership;
- money;
- right on claim;
- right on intellectual property etc.

The law also provides basic principles for investing:

1. Freedom to invest;
2. Non-discrimination of investments (investors' equality);
3. Transparency;
4. Complying with the obligations undertaken (investor).

Also mechanisms of protecting investments are provided for:

- guaranteeing observance of investors' rights;
- guarantees against expropriation;
- guarantees to compensate damages incurred.

Opposition parties criticised the last chapter on the grounds it were just nice words in reality though, they had not been backed up by adequate policies and investors were persecuted (Union Fenosa, Farmaco, Megadat, expropriation of "Dacia" hotel).

The law includes special provisions on foreign investors and foreign investments. Generally speaking, the law did not add any new guarantees or methods of fostering investors. The latter shall be included in the fiscal, customs, and property law. It only establishes the general framework, the foundation for the state policy on investments. The latter will be developed and enforced by the Government, in particular through the Ministry of Economy.

II. International acts ratified by Parliament

1. European Convention on transferring indicted persons and Additional Protocol to the Convention ratified by Parliament on March 11, 2004

ADEPT Comment: Several reasons were cited in favour of the document, namely:

Political - protection is provided to citizens during the sentence and also to facilitate his/her social reintegration in their origin social environment. Also, a legal framework is established enabling other states to protect their citizens convicted on the soil of the Republic of Moldova, which would be saluted by European countries.

Normative - Convention does not breach rights or obligations provided for in the extradition and other international treaties that provide for the transfer of detainees.

Organisational - Ministry of Justices in the contracting countries would be responsible for enforcing the Convention and its additional protocol so as to co-ordinate transferring procedures.

Financial - Enforcing countries would bear the cost of incidental expenses. To cover those expenses (translation of documentation, transfer) special funds are to be allocated.

Other - once the law is enforced it is expected that a great number of applications will be filled to Republic of Moldova. Currently there is quite a number of Moldovan citizens convicted abroad who want to serve the sentence in their home country for various reasons.

2. Convention between Republic of Moldova and Slovak Republic of eliminating double taxation and prevention of fiscal evasion on income and asset tax

ADEPT Comment: Convention for eliminating double taxation and prevention of fiscal evasion is intended to create fiscal systems that would exclude double taxation of legal and natural entities. The Convention is aimed at: eliminating double taxation, preventing fiscal evasion, sharing the right on taxation among contracting countries, eliminating fiscal discrimination under any form. The two countries signed the Convention so as to attract foreign investments, assist residents to place investments abroad and solve any fiscal litigation. Convention is based on the following principles:

- non-discrimination of tax payers regardless of the form of property;
- stability of taxes that would boost investor confidence and would establish a stable basis for budgetary revenues and fostering entrepreneurship;
- simple, understandable, easy readable procedures of taxation;
- boosting entrepreneurship, encouraging a rational usage of natural resources and economic activities by providing incentives.

To enforce the Convention the two countries would have to conclude a number of agreements and conventions.

3. Protocol on ceasing the Agreement on establishing an Eurasia Union "Coal and Metal"

ADEPT Comment: In 1993 many of the CIS countries signed the Agreement on establishing an Eurasia Union "Coal and Metal" with an eye towards establishing favourable conditions for the efficient development of the coal and metallurgical industry and developing co-ordinated policies in the field.

After seven years of activity, several flaws and violations in the administration of funds by its leadership were found after a financial and economic evaluation. Most importantly, it was found out that Union didn't fulfil the very purpose it was established for.

On September 19, 2003 leaders of CIS member states signed a protocol on its abrogation. Noteworthy, "Coal and Metal" union was one of the first institutions established in CIS to be liquidated and the process is likely to continue and this mainly due to CIS institutions inefficiency and huge costs, that after all not all the countries allocate.

III. Law on cancelling penalties and fines to rayonal thermo-enterprises

ADEPT Comment: The law annulled the penalties and fines incurred by rayonal thermo-enterprises as of January 1, 2004. Their debt is estimated at 22.5 million Lei. Another 22.5 represent the fines and penalties. The

enterprises have no chance whatsoever to pay the debts incurred, whereas by annulling them the state hopes to boost the sector.

IV. Draft law on approving the regulation on the procedure of publishing and re-publishing normative acts and corrections to them in the Official Monitor

ADEPT Comment: The regulation was developed so as to enforce the provisions of the Law on Normative Acts issued by the Government and central or local public administration. It includes provisions on publishing the normative acts, responsibility of the persons designated to edit the documents prior to publishing. It also refers to the procedure of republishing legal acts that undergone modifications or completions.

One of the goals of the law was to eliminate any possibility of operating changes to the edited and published normative acts, as well as to systemise the normative acts published in the Official Monitor of the Republic of Moldova.

Parliament activity, March 22-26, 2004

30 March 2004

Stormy political debates have calmed down and this for several reasons. For a start, it is largely due to regrouping among political forces and their secret negotiations. Until there is a clear election strategy and position towards party in power, political parties remain tight lipped about joining any electoral block and refrain from rattling about calls to form coalitions.

Another reason is that ruling party has eased the pressure wielded on opposition leaders. Moreover, during its March 25 session majority faction voted in favour of restoring Lidia Gutu as Head of Social Protection Commission, formerly designated to the position by "Braghis Alliance". The move was explained by the "need to promote women in politics and to key positions", as well as "to show that relations between majority faction and opposition are constructive".

On the other hand, those relationships are still tensed. And this despite the fact that Ministry of Interior did answer to questions Christian-Democrats long insisted on.

On March 25 deputies examined a number of legal acts, which we would consider in greater detail below:

I. Law on modification of the law on taking in and out of the country goods by natural entities

ADEPT Comment: Modifications to the law are:

- a. Granting natural entities the right to take out of the Republic of Moldova: goods for trade or manufacturing activity in amount not exceeding 100,000 Euro; metal or precious stones pieces manufactured by authorised businesses and that do not exceed the aforesaid amount;
- b. Granting natural entities resident in the Republic of Moldova the right to bring in vehicles in use for no more than 10 years for a time period of up to 45 days without any customs fee on condition: vehicles should be registered in other countries on the name of persons residents in the Republic of Moldova; a guarantee (in national or foreign currency) shall be deposited at the customs checkpoint equal to twice the taxes due; after 45 days vehicles shall leave the soil of the Republic of Moldova and the guarantee shall be refunded.

Currently the amount is 2,000 Euro, which is viewed as being too low, whereas the interdiction as being too restrictive for the market economy and promotion of economic ties on the international scale.

Noteworthy, the move was severely criticised both by opposition and ruling party that argued the law facilitated capital exodus from the country. In response lawmakers pointed that once goods were taken out of the country, the money they were bought on, stayed in the country.

II. Law on completing the Code on Administrative Offence

ADEPT Comment: The law completes the Code on Administrative Offence with a new article 174²³ "**Breaching the law on state representation in economic societies**".

This article provides sanctions ranging 3,600 and 54,000 Lei for: violation of rights and legal interests of the state during the establishment, operation, reorganisation and liquidation of societies, thereby the state shall be ascribed the role of participant having unlimited rights or its participation quota in registered capital shall be decreased, in cases prohibited by law; concealing the conditions in which a state representative holds or has got a patrimonial interest in the economic enterprise and failed to notify authorised bodies; concealing data on economic or financial activity or any other information that state authorities is entitled to request, etc.

III. Law on modification of legal acts regulating operative activity, holding guns and licensing of certain types of activity

ADEPT Comment: The law brings a number of legal acts in accordance with the provisions of the new Code on Penal Procedures and Law on Private Detectives and Security. Noteworthy, the draft raised a rich harvest of

criticism. In the eyes of many it is too restrictive and grants a too broad mandate to Ministry of Internal Affairs and other state structures on the expense of similar private structures.

IV. Draft law on freezing and restructuring the debt of medical and sanitary institutions

ADEPT Comment: The draft passed in the first reading envisages freezing for a two year period the debts to the state social security fund incurred by medical institutions, as well as restructuring for another five years the aforesaid debt once the freezing period expires. The cost of the move is estimated at 36 million Lei. Government claims that the current state of affairs thwarts any attempt to enforce obligatory medical insurance.

V. Draft law on modification of the law on budgetary process

ADEPT Comment: The draft passed in the first reading entitles State Treasury units to execute the writ of execution and court ruling related to extracting funds from state budget or funds of state-funded institution, in case the latter failed to present in due time payment documents.

Under current law, budget executor (i.e. heads of public institutions) should transmit writs to executors of the treasury, however they never do, thereby postponing the execution, which in turn was subject to sanctions and fines. However, those amendments would allow avoiding such cases. It also might deprive local public administration of the funds needed for activities, in cases when there are writs of execution for huge amounts. One of the recurring issues during the discussions was responsibility of Ministries and decision-makers who due to their lack of competence or abuses prejudice against law subjects, who later regain their rights in court, thus incurring additional costs to the state.

VI. Draft law on granting local public administration the right to sell plots and real estate

ADEPT Comment: The law passed in the first reading entrusts rayon public administration to sell plots surrounding enterprises, housing and real estate and agricultural societies. The need to pass the law stems from the fact that local agencies of the Privatisation Department were shut down, whereas their functions are now to be taken over by local authorities in line with the decentralisation and local autonomy principles.

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V. Draft law on modification of the law on budgetary process

ADEPT Comment: The draft passed in the first reading entitles State Treasury units to execute the writ of execution and court ruling related to extracting funds from state budget or funds of state-funded institution, in case the latter failed to present in due time payment documents.

Under current law, budget executor (i.e. heads of public institutions) should transmit writs to executors of the treasury, however they never do, thereby postponing the execution, which in turn was subject to sanctions and fines. However, those amendments would allow avoiding such cases. It also might deprive local public administration of the funds needed for activities, in cases when there are writs of execution for huge amounts. One of the recurring issues during the discussions was responsibility of Ministries and decision-makers who due to their lack of competence or abuses prejudice against law subjects, who later regain their rights in court, thus incurring additional costs to the state.

VI. Draft law on granting local public administration the right to sell plots and real estate

ADEPT Comment: The law passed in the first reading entrusts rayon public administration to sell plots surrounding enterprises, housing and real estate and agricultural societies. The need to pass the law stems from the fact that local agencies of the Privatisation Department were shut down, whereas their functions are now to be taken over by local authorities in line with the decentralisation and local autonomy principles.